

1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 SPANISH BROADCASTING SYSTEM INC.,)
 Plaintiff,)
5)
 VS.) Case No.
6) 02-21755-CIV
 CLEAR CHANNEL COMMUNICATIONS,)
7 INC., and HISPANIC BROADCASTING)
8 CORPORATION)

9 *****

10 VIDEOTAPED DEPOSITION OF
11 RANDALL MAYS
12 TAKEN JANUARY 20, 2003
 Volume 1

13 *****

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16 VIDEOTAPED DEPOSITION of RANDALL MAYS, produced
17 as a witness at the instance of the Plaintiffs, and
18 duly sworn, was taken in the above-styled and numbered
19 cause on the 20th day of January, 2003, from 10:12
20 a.m. to 6:14 p.m., before Christine Knepler, CSR, CRR
21 in and for the State of Texas, reported by machine
22 shorthand method, at the offices of Clear Channel
23 Communications, 200 East Basse Road, San Antonio,
24 Texas, pursuant to provisions stated on the record or
25 attached hereto.

1 A I believe so, yes.

2 Q Maybe with a different name of the company
3 but --

4 A I think there was -- I think there was a
5 different name but, yes, that was his position.

6 Q A predecessor to CSF.

7 How -- did you know Mr. Cruz before you
8 went on the board of Heftel?

9 A I had met him, yes.

10 Q And how -- in what context had you met him?

11 A I think the first -- I can't remember the
12 first time. But we did business with -- Clear Channel
13 did business with CS First Boston. They did equity --
14 they were in our equity underwriting deals. And I had
15 met him because he headed up their equity capital
16 markets.

17 Q So you met him in the context of his being
18 the lead person for CSFB doing equity deals for Clear
19 Channel.

20 A That was how I came to know him, yes.

21 Q Had you known him when you were at Goldman
22 Sachs?

23 A I think I knew of him, yes.

24 Q Had you met him back then?

25 A I -- I think the first time I met him was

1 in -- I think the first time I met him I was working
2 at Clear Channel. So I would say the answer to that
3 is no.

4 Q Did -- before you went to Goldman, did
5 Goldman ever do any business with Clear Channel?

6 A Not that I can recall.

7 Q Was there any reason you -- I mean
8 certainly -- certainly a fine place. Is there any
9 reason you picked Goldman as opposed to one of the
10 other investment banks to go to after Harvard Business
11 School?

12 A I had worked there as a -- I had worked
13 there between my years -- my two years at Goldman --
14 at Harvard and thought it was a very good firm, very
15 well respected. I couldn't tell you specifically why
16 I went there other than other places other than they
17 made me an offer.

18 Q That usually helps. Right?

19 Did you -- did you play a role in the
20 selection of Mr. Cruz for the -- for the Heftel board?

21 A What do you mean by did I play a role?

22 Q Were you involved in any discussions having
23 to do with the -- the director --

24 MR. DWYER: Let me withdraw that.

25 Q It was Clear Channel who decided who became

1 the directors of Heftel after Clear Channel acquired a
2 majority interest. Is that correct?

3 A We were the controlling party, yes.

4 Q And you made -- Clear Channel made the
5 decision as to who the directors would be.

6 A That is my understanding.

7 Q And were you involved in the -- the
8 discussions that led to the identification of who the
9 right people would be who would go on the Heftel
10 board?

11 A I was part of that discussion.

12 Q Was one of the things that was discussed
13 about Mr. Cruz the fact that he is Hispanic?

14 A Yes.

15 Q That was -- a -- one of the factors, among
16 others, that led to his being a good candidate to go
17 on the Heftel board.

18 A Yes.

19 MR. DWYER: I'm going to mark as
20 Exhibits 62 and 63 two documents from the HBC
21 production. 62 is August 19th, 1996 memo from Randall
22 Mays to Heftel board. And 63, which is Bates numbered
23 HBC 5471 to 5472.

24 And Exhibit 63 is a September 12th,
25 1996 letter from Randall Mays for the special

1 Q And we've talked about Mr. Cruz and we've
2 talked about Mr. McCombs. Don't -- I guess we don't
3 need to need to talk about Clear Channel, Lowry Mays.

4 What was Mr. John Williams' position at
5 the time?

6 A He was a director of Clear Channel.

7 Q What was his -- what were his outside -- was
8 he an employee director or was he an outside director?

9 A He was an outside director.

10 Q And what was his basic business at the time?

11 A I believe he was in the securities business.

12 Q Do you know what firm he was with?

13 A I believe at this time he was with Evereen
14 Securities.

15 Q I'm sorry?

16 A Evereen Securities.

17 Q Can you spell that?

18 A I believe it's E-v-e-r-e-e-n I believe.
19 Something like that.

20 Q And Jim Raines is one of the people that's
21 listed there. Who is Mr. Raines?

22 A He is an investment banker.

23 Q And where is he located?

24 A Here in San Antonio.

25 Q And what -- how did you know Mr. Raines?

1 A He -- he was an investment banker here in
2 town and had done business with Clear Channel. He was
3 also someone who I knew.

4 Q In what context did you know Mr. Raines?

5 A I played golf with him.

6 Q What kind of business had he done for Clear
7 Channel?

8 A He had helped to underwrite securities for
9 Clear Channel.

10 Q When you say helped underwrite securities,
11 what -- what do you mean?

12 A I mean his firm was a underwriter in certain
13 equity offerings for Clear Channel.

14 Q Over what period of time?

15 A Primarily in the early 1990s.

16 Q Were they part of an underwriting syndicate?

17 A Yes.

18 Q And what role did they have in the
19 underwriting syndicate?

20 A I'm not sure I understand the question.

21 Q Well, were they the lead underwriter in --

22 A No.

23 Q Were they --

24 A No. They were an underwriter.

25 Q They were -- so they were an underwriter of

1 Clear Channel securities.

2 A (Moves head up and down.)

3 Q What was the name of Mr. Raines' company?

4 A James N. Raines & company.

5 Q Is he -- is that still the name of

6 Mr. Raines' company?

7 A I believe so.

8 Q Had -- when -- Mr. Raines still participate
9 in underwritings for Clear Channel?

10 A No.

11 Q When did Mr. Raines last participate in
12 underwritings for Clear Channel?

13 A You know, I couldn't honestly tell you. I
14 don't know. It would have been in -- my guess is in
15 the '95/'96 time frame. I just don't know.

16 Q Do you still play golf with him?

17 A I **do** occasionally.

18 Q Does Mr. Raines have any other business
19 dealings with Clear Channel other than the -- the fact
20 that he used to do underwritings?

21 A Any other business dealings with Clear
22 Channel? No.

23 Q Does Mr. Raines have any business dealings
24 with any member of the Mays family like trustee of
25 trusts or managing portfolios, anything of that type?

1 growth in the Spanish radio revenue market?

2 A I don't -- I don't recall. I don't recall
3 writing this so it's very difficult for me to know
4 what I was thinking.

5 Q Do you -- was there someone who was
6 consulting with you about -- about this?

7 A I don't recall.

8 Q What was Mr. Amling's role in connection
9 with the fairness opinion?

10 A Mr. Amling worked for Alex Brown. I assume
11 his firm was one who was being asked to do the
12 fairness agreement.

13 Q Had you dealt with Mr. Amling or Alex Brown
14 before this September 1996 letter?

15 A Yes.

16 Q And in what context had you dealt with
17 Mr. Amling or Alex Brown?

18 A They had been an underwriter of securities
19 for the company for Clear Channel, and they had been
20 an underwriter -- I guess at that point they had only
21 been an underwriter for securities for Clear Channel.

22 Q And had they had a more significant position
23 in the underwriting than Mr. Raines or about the same?

24 A No. I -- they would have been a greater
25 role.

1 Q Were they the lead underwriter in any Clear
2 Channel offerings?

3 A Yes.

4 Q So was there a reason why Alex Brown was a
5 firm that a company in the radio business would have
6 looked to, to be a lead underwriter for its offering?

7 A They were a company that we had a close
8 relationship with and they did a good job for us.

9 Q But over what period of time are you talking
10 about in terms of underwritings for Clear Channel that
11 were done by Alex Brown?

12 A It was primarily in the time frame from 1993
13 to 1996 or '97.

14 Q There were -- there were other firms in the
15 investment banking world who were capable of doing
16 those underwritings, is that correct, in that period
17 of time?

18 A There are lots and lots of companies.

19 Q I mean Goldman could have done those
20 underwritings. Right?

21 A Certainly they were licensed by the NASD to
22 do that, yes.

23 Q So why did Clear Channel pick Alex Brown?
24 Was there something special about Alex Brown?

25 A We had had a relationship with them since

1 1993. And they had continued to do a good job so I
2 would say it's primarily based on performance.

3 Q Did Alex Brown have a special expertise in
4 the radio business?

5 A I'm not sure I understand the question.

6 Q Had Alex Brown done other offerings of --
7 public offerings of securities for companies in the
8 radio business other than Clear Channel?

9 A I think they had.

10 Q And did they -- did they -- had they done
11 more radio underwritings than most of the other
12 investment banks at that time?

13 A I don't know.

14 Q How did you first -- was Mr. Amling the lead
15 person for Alex Brown that you dealt with at Clear
16 Channel?

17 A On the investment banking side, yes.

18 Q Were there other sides that -- were there
19 people that you dealt with at Alex Brown.

20 A Sure there was. I mean most investment
21 banks are divided into a number of different sectors.

22 Q What were the other sectors that you dealt
23 with?

24 A MNA, research, and capital markets are
25 generally the areas that they delineate.

1 Q Who would you have dealt with in the
2 research area?

3 A Drew Marcus.

4 Q And how long had you been dealing with
5 Drew Marcus by the time of this September 1996 letter?

6 A Since 1993 when I came on board.

7 Q Was Drew Marcus a leading radio analyst at
8 the time?

9 A I would say yes.

10 Q And he's still one of the leading radio
11 analysts today. Is that correct?

12 A It depends on how you would define leading.
13 If you looked at the last institutional investor,
14 which is the ranking, he is not.

15 Q Is he -- and where did he rank in the last
16 institutional investor?

17 A I don't think he showed up on the ranking so
18 I don't know.

19 Q Do you still think he's a good radio
20 analyst?

21 A I have no reason to think he's not.

22 Q And had he been on -- in the institutional
23 investor rankings prior to the most recent one?

24 A At different points in time, yes. I don't
25 know if he was at that point in time.

1 Q If you hadn't taken those steps and the
2 stations had been attributable to Clear Channel, would
3 Clear Channel have had to divest certain stations in
4 certain markets?

5 A To the extent that we were over the
6 ownership limits, yes.

7 Q Did you -- did Clear Channel consider doing
8 that as an alternative to -- to becoming a
9 nonattributable owner of Heftel stock?

10 A At the time that we did the Tichenor
11 merger?

12 Q Yes.

13 A Not to my knowledge.

14 Q What were -- what are the consequences to --
15 when --

16 MR. DWYER: Withdrawn.

17 Q When -- if you remember, we talked before
18 about the ability when you were a 20 percent owner of
19 Heftel to -- to take 20 percent of Heftel's net income
20 or net losses onto your income statement.

21 Did that change at all once you -- once
22 Clear Channel became a majority owner of Heftel?

23 A No.

24 Q You could just -- all the change was that
25 you could -- you could take a -- a larger percentage

1 of net income into your income statement?

2 A That -- yes. That's what happened.

3 Q When -- when -- when Heftel and Tichenor
4 merged what consequences did that have to Clear
5 Channel in terms of the ability to consolidate net
6 income on its -- on its income statement?

7 A We -- we accounted for it under the equity
8 method so we didn't consolidate it.

9 Q So it was different.

10 A We -- we -- from the time that we made the
11 acquisition of the 20 percent to the time we did the
12 Tichenor deal we had always accounted for that as an
13 equity -- under the equity method.

14 Q And you -- and you always took the
15 percentage ownership into your -- of that income into
16 your income statement.

17 A That's correct.

18 Q After the Tichenor -- did it change after
19 the Tichenor acquisition?

20 A Did what change?

21 Q Did your ability to take a percentage of
22 that income into the -- into your income statement
23 change after the Tichenor acquisition?

24 A No. We continued to account for it under
25 the equity method.

1 Q Just -- just the percentage is different.

2 A That's correct.

3 Q And you -- you continued to account for it
4 that way today?

5 A That's my understanding, yes.

6 Q And today you take 26 percent into -- into
7 net income?

8 A I think that's a rough amount, yeah.

9 Q At the -- at the time -- that the -- that
10 the Heftel and Tichenor Media acquisition was in
11 progress did -- did you become aware of any activity
12 concerning an approach to SBS to become a part of the
13 combined Tichenor/Heftel entity?

14 THE WITNESS: Can you repeat that?

15 (The requested portion was read back)

16 A You know, I know there were discussions with
17 SBS. I can't tell you how soon that started. So I --
18 I don't know that there were or there weren't.

19 Q Well, let me ask -- let me ask it more
20 broadly --

21 A Okay.

22 Q -- and then I'll use some documents to focus
23 us in.

24 A Okay.

25 Q Have you ever been involved in any